

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8249 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DUSHYANT SAVAILAL PATEL & ORS.

Versus

AHMEDABAD MUNICIPAL CORPN.

Appearance:

MR GIRISH PATEL for Petitioners

MR SN SHELAT for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 12/07/96

ORAL JUDGMENT

The petitioners, in all 113, filed this Special Civil Application before this Court challenging therein the order of the Labour Court, Ahmedabad, made in Recovery Application No.1631/81 on 25th July 1990.

2. The petitioners filed an application before the Labour Court u/s.33C(2) of the Industrial Disputes Act, 1947, inter-alia contending that they are performing the

work and duties of operators and pump attendants and therefore entitled to the salary payable to the operators and further prayed for payment of difference in the salary on the basis of salary payable to the pumpmen and pump attendants. The Labour Court, vide its order dated 25th July 1990, dismissed the said application and hence this application.

3. One of the contentions raised by the learned counsel for the respondent is that the nature of claim of the petitioners as made was not maintainable u/s.33C(2) of the Industrial Disputes Act, 1947. On the other hand, the counsel for the petitioners contended that leaving apart the aforesaid objection, the claim of the petitioners is maintainable on the basis of I.G. Thakore Award Part-III. The counsel for the respondents further contended that no such claim has been made by the petitioners before the Labour Court and as such, this new plea cannot be taken before this Court.

4. I do not consider it necessary to go on the merits of the contentions raised by learned counsel for parties as the parties have passed a Purshis and prayed therein that this Special Civil Application may be disposed of in terms of agreement as entered therein. I have gone through the Purshis. The petitioners have agreed that the order passed by the Labour Court, Ahmedabad, in Recovery Application No.1631 of 1981, dated 25th July 1990, be confirmed. Further it is prayed in the Purshis that the matter may be remanded back to the Labour Court where it will be open to the petitioners to file additional statement of claim in their Recovery Application No.1631 of 1981 for their entitlement to be placed in the grade of Rs.260-430 on the basis of I.G. Thakore Award. To this extend only, the proceedings may be ordered to be restored. This Course is difficult to be accepted because once the order passed by the Labour Court is maintained, the application filed by the petitioners u/s.33C(2) of the Industrial Disputes Act, 1947 stands disposed of and nothing remains pending. Taking into consideration this aspect of the matter, this Special Civil Application is dismissed and the the order of the Labour Court in Recovery Application No.1631 of 1981 dated 25th July 1990, is confirmed. However, on the agreement of parties, it is hereby ordered that the petitioners shall be free to file fresh application before the Labour Court, Ahmedabad, for their entitlement to be placed in the grade of Rs.260-430 on the basis of I.G. Thakore Award. It is made clear that the Corporation can also raise all the contentions disputing claim as also regarding maintainability of such claim

u/s.33C(2) of the Industrial Disputes Act, 1947, in case such proceedings are initiated by the petitioners. It is further ordered that the Labour Court, in case such an application is filed by the petitioners, shall decide the same in accordance with law after giving full opportunity to both the parties to lead their evidence and after giving them opportunity of making their submissions. Rule is discharged with no order as to costs.

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(sunil)